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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/538,188

06/09/2005

Leo Derici

J3674(C)

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201 7590 06/09/2009  
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EXAMINER

GULLEDGE, BRIAN M

ART UNIT

PAPER NUMBER

1619

MAIL DATE

DELIVERY MODE

06/09/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/538,188	<b>Applicant(s)</b> DERICI ET AL.	
	<b>Examiner</b> Brian Gullede	<b>Art Unit</b> 1619	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-8,10,11,13 and 15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8,10,11,13 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Continued Examination Under 37 CFR 1.114*

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 20, 2009 has been entered.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**Claims 1-8, 10-11, 13, and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.** With regards to the surface active block copolymer, claim 1 recites that the ratio of the two variables  $n$  (which dictates the amount of the dimethylsiloxane component of the copolymer) and  $m$  (which dictates the amount of the polyethylene oxide component of the copolymer) is from 0.1 to 1.2. Claim 1 has been amended to recite that the surface active block copolymer also comprises polyethylene oxide from 60 to 85 wt%. However, a ratio of  $n$  to  $m$  of 0.1 would result in the polyethylene oxide comprising 92 wt% of the copolymer, and a ratio of  $n$  to  $m$  of 1.2 would result in the polyethylene oxide comprising 50 wt% of the copolymer. Thus, the ratio recites a weight range that is broader than

Art Unit: 1619

the subsequently weight range. And a broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c).

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-8, 10-11, 13, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Evans et al. (US Patent 5,837,661) in view of Peffly et al. (US Patent 5,972,356).** Evans et al. discloses hair conditioning compositions comprising from about 5 wt% to about 50 wt% of a deterative surfactant and from about 0.05 wt% to about 10 wt% of a silicone hair conditioning agent (abstract, lines 1-5). The deterative surfactant is anionic, nonionic, amphoteric, or zwitterionic (column 2, lines 38-42). Evans et al. discloses that a preferred silicone hair conditioning agent is trimethylsilylamodimethicone (column 10, line 65 – column 11, line 10), and Evans et al. also discloses that the agents employed have a viscosity preferably from 50,000 centistrokes to 1,500,000 centistrokes (1 centistroke =  $1 \text{ mm}^2 \cdot \text{s}^{-1}$ ) (column 8, line 64 – column 9, line 6). This range overlap the recited range, and in cases involving overlapping ranges, the courts have consistently held that even a slight overlap in range establishes a *prima facie* case of obviousness. *In re Peterson*, 65 USPQ2d 1379, 1382 (Fed. Cir. 2003). Evans et al. further teaches that the silicone hair conditioning agent, when incorporated into the composition, is formed into droplets that are from 5 microns to 25 microns (column 20, lines 55-59). Evans et

Art Unit: 1619

al. does not teach the inclusion of the instantly recited surface active block copolymer according to formula I.

Peffly et al. discloses hair styling compositions containing silicone emulsions (column 1, lines 4-6). Peffly et al. teaches that while the incorporation of silicone emulsions into a hair care composition is desirable because of improved performance, silicone emulsions tend to be difficult to formulate (column 1, lines 41-46). Peffly et al. then discloses that by incorporating the taught silicone polyether compounds into a hair care composition with a silicone emulsion, the stability of the composition is improved (column 1, line 64 – column 2, line 8). Examples of the siloxane-polyethers include those sold under the trade names of DC 193 and DC Q4-3667, which have a polyethylene oxide content of 67% and 63%, respectively (column 19, lines 55-65). These silicone-polyoxyalkylene copolymer surfactants are included in from 0.01 to about 10 wt% (abstract, lines 6-8), a range that overlaps the instantly recited range.

Therefore, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have added a silicone-polyoxyalkylene copolymer surfactants to the hair care composition disclosed by Evans et al., as Peffly et al. teaches that the inclusion of these surfactants leads to improved stability and easier formulation of hair care compositions comprising a silicone emulsion.

Instant claims 10, 11, and 13 recites methods associated with the hair conditioning composition. Evans et al. teaches a method of making the hair conditioning composition that comprises forming a silicone premix by adding the silicone oil to an aqueous mixture of the surfactant, mixing with a high-shear mixer to achieve the desired silicone particle size, and then adding the rest of the ingredients (column 20, line 53 – column 21, line 20). Evans et al. teaches

Art Unit: 1619

a method of cleaning and conditioning hair comprising applying the conditioning composition to the hair and then rinsing the composition from the hair (column 20, lines 32-38).

### ***Conclusion***

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Gulledge whose telephone number is (571) 270-5756. The examiner can normally be reached on Monday-Thursday 6:00am - 3:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frederick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BMG

/Frederick Krass/

Application/Control Number: 10/538,188

Page 6

Art Unit: 1619

Supervisory Patent Examiner, Art Unit 1612